

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 102 of 2004

NIHALO & ORS
V/S
VED PRAKASH

Mr. GR GOYAL, for the appellant / petitioner

Mr. VK AGARWAL, for the respondent

Date of Order : 24.7.2006

HON'BLE SHRI N P GUPTA, J.

ORDER

Heard learned counsel for the appellant. This appeal has been filed by the defendant against whom the suit for specific performance has been decreed by both the learned courts below.

Only two submissions were made viz., that the suit is barred by time, and secondly that the plaintiff has failed to prove his readiness and willingness to perform his part of the contract.

I have considered the submissions.

Admittedly no time has been fixed for performance in the agreement. That being the position, the matter will be governed by Article 54 of the Limitation Act, whereunder the period of limitation is to commence from the date, when

the plaintiff has notice that performance is refused. In my view, in the present case, though various facts had been pleaded, and circumstances had been attempted to be brought on record, but nothing has been shown, as to, at what point of time, the defendant had refused to perform, and that, from that date, the suit is beyond time. It was sought to be contended, that notice was given by the plaintiff on 20.8.87, and therein the defendant was called upon to seek permission from the competent authorities, within one month, and execute the sale deed, and therefore, according to learned counsel, if the needful was not done within one month, the limitation starts from that date, and therefore, the suit is barred by time. I am afraid, I cannot accept this contention, in view of provisions of Article 54 of the Limitation Act, which reads as under:

"Art.54. For specific performance of a contract.	Three years	The date fixed for the performance, or if no such date is fixed, when the plaintiff has notice that performance is refused."
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From reading of the above Article, it is clear, that expiry of the period given by the plaintiff in the notice, does not give the starting point of limitation.

Learned counsel relied upon the judgment of

Hon'ble the Supreme Court, in Pukhraj D. Jain & Ors. Vs. G. Gopalkrishna, reported in 2004(7) SCC 251. Suffice it to say, that the facts of that case are distinguishable, inasmuch as, in that case, the plaintiff had filed an application for amendment of plaint, seeking to add the prayer for specific performance, and that amended application was opposed by the defendant, which obviously made it clear to the plaintiff, that the defendant is not prepared for performance, and thus, it constituted refusal, and from the date when the application was opposed, it was on these facts construed, that the plaintiff had notice of refusal. In the present case, I pointedly asked the learned counsel for the appellant, repeatedly, to point out the precise date when the plaintiff had notice of the refusal by the appellant, but learned counsel failed to point out any specific date, and only sought to contend the round about facts. Thus, it cannot be said, that the suit is barred by time.

So far readiness and willingness is concerned, the plaintiff has clearly alleged in the plaint his readiness and willingness to perform his part of the contract, and while in the witness-box as P.W.1 also, he has deposed, to have always been, and to be, ready and willing to perform his part of contract, and significantly, on this part of the evidence, there is no cross-examination on the side of the defendant. Learned counsel for the appellant was

requested to point out, if the plaintiff had been cross-examined on this part of his evidence, and learned counsel also even after closely reading the statement submitted, that the plaintiff has not been cross-examined. In my view, in view of this situation, it cannot be said, that the findings recorded by learned courts below on this aspect, are at all perverse, or even require any interference in my second appellate jurisdiction.

No other point was argued.

The appeal thus, does not involve any substantial question of law, and the same is, therefore, dismissed summarily.

(N P GUPTA), J.

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